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**ZYXEL COMMUNICATIONS UK LIMITED**

*and ZYXEL COMMUNICATIONS A/S*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re APPLICATION OF ZYXEL  
COMMUNICATIONS UK LIMITED and  
ZYXEL COMMUNICATIONS A/S FOR AN  
ORDER PURSUANT TO 28 U.S.C. § 1782  
GRANTING LEAVE TO OBTAIN  
DISCOVERY FROM BROADCOM INC.  
and BROADCOM CORP. FOR USE IN  
FOREIGN PROCEEDINGS

Civ. A. No. 19-mc-080175

**SECOND DECLARATION OF MARK  
MARFÉ IN SUPPORT OF EX PARTE  
APPLICATION OF ZYXEL  
COMMUNICATIONS UK LIMITED and  
ZYXEL COMMUNICATIONS A/S**

I, Mark Charles Marfé, declare as follows:

1. I make this declaration in order to inform the court about a very recent development in the litigation between TQ Delta and ZyXEL that is the subject of this application.

2. On July 18, 2019, the Court of Appeal (Civil Division) handed down a judgment that held that the RAND declarations that the claimant, TQ Delta LLC, was seeking had no real prospect of success. A true copy of the judgment is attached to this declaration as Exhibit

1.

DECLARATION OF MARK CHARLES MARFÉ

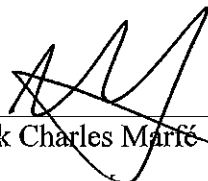
1           3.       As a result of this new judgment, the September 2019 RAND trial referenced in  
2 Paragraph 8 of my prior declaration, dated July 3, 2019, will not go forward on that date. A  
3 true copy of the sealed order of the Court of Appeal is attached to this declaration as Exhibit  
4 2. Pursuant to the order, the RAND trial listed to take place in September 2019 will be  
5 vacated. Moreover, TQ Delta is refused permission to appeal to the Supreme Court by the  
6 Court of Appeal. However, I believe that TQ Delta may now seek leave from the Supreme  
7 Court, to take an appeal to the Supreme Court.  
8

9           4.       Because of the possibility of an appeal it is now uncertain whether a RAND trial  
10 will take place in England. However, if TQ Delta obtains that permission and if its appeal  
11 succeeds, then the RAND trial may be listed again and preparations for the RAND trial will  
12 recommence. In light of the likelihood of an appeal, however, ZyXEL continues to believe  
13 that the discovery it seeks in this proceeding for use in the English proceeding is of high  
14 importance. It is currently not known when TQ Delta will be informed by the UK Supreme  
15 Court whether it has obtained permission to appeal.  
16  
17

18           5.       Moreover, the second action TQ Delta commenced against ZyXEL in March  
19 2019, referenced in Paragraph 9 of my prior declaration, remains pending. The evidence  
20 ZyXEL plans to obtain in this discovery proceeding will be relevant to the March 2019 action  
21 as well if permission to appeal is obtained by TQ Delta and the subsequent appeal succeeds.  
22

23           I declare under penalty of perjury under the laws of the United States that the foregoing is  
24 true and correct.  
25

26 Executed on July 23, 2019 in London, England.

27   
28 Mark Charles Marfè

DECLARATION OF MARK CHARLES MARFÈ